

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 1023 of 1982

with

FIRST APPEAL No 1024 of 1982

For Approval and Signature:

Hon'ble MR.JUSTICE B.C.PATEL and
MR.JUSTICE N.N.MATHUR

- =====
1. Whether Reporters of Local Papers may be allowed to see the judgements?
 2. To be referred to the Reporter or not?
 3. Whether Their Lordships wish to see the fair copy of the judgement?
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge?

G S R T C

Versus

RADHABEN L KOYANI

Appearance:

1. First Appeal No. 1023 of 1982
MR GN DESAI for Petitioner
MR PM RAVAL for Respondent No. 1, 5
SERVED for Respondent No. 4
2. First Appeal No 1024 of 1982
MR GN DESAI for Petitioner
MR PM RAVAL for Respondent No. 1, 2, 3, 4, 5

CORAM : MR.JUSTICE B.C.PATEL and

Date of decision: 01/10/96

ORAL JUDGEMENT (Per Patel, J.)

1. These appeals are preferred by the Gujarat State Road Transport Corporation (hereinafter referred to as the Corporation) against the common judgment delivered by Motor Accident Claims Tribunal, Jamnagar in MACPs No. 68/81 and 69/81 on 21st October 1981 whereby the claimants of MACP No. 68/81 were held entitled to get Rs.66,938/- while the claimants of MACP No. 69/81 were held entitled to get Rs.41,250/-.

2. On 23.10.1980, at about 6.15 p.m., on Jam Jodhpur - Jamnagar State Highway, near village Goy, a vehicular accident took place in which a bus of the Corporation bearing registration No. GRT 7004 and a Rajadoot Motorcycle bearing registration No. GRC 2869 collided, as a result of which two persons, viz: Lavji Anand and Ishak Osman lost their lives.

3. Mr. Desai, learned advocate for the appellant pointed out from the judgment that the case is of contributory negligence, and the Tribunal has seriously erred in assessing the same. Initially, learned counsel submitted that the ST bus driver cannot be said to be negligent as the bus was found on the extreme left and it is the Motorcyclist who, by coming on the wrong side, collided with the bus. However, subsequently, learned advocate restricted his submissions with regard to extent of contributory negligence and the amount payable by the Corporation.

4. From the panchnama at Exh.27, it is clear that the bus was lying on the western side of the road and that the front wheels of the bus were on the untarred shoulder while the rear wheels were on the asphalted road. It is also clear that the damage caused to the motor cycle was on the front side and the front head light and front wheel of the motorcycle. Panchnama also reveals that so far as the ST bus is concerned, the damage was on the right front side mudguard. It becomes clear that the ST bus was on the left side. However, the Tribunal has come to the conclusion that it was not completely on the extreme left side of the road. Mr. Desai, learned advocate submitted that as there was damage on the right front side of the ST bus and the bus was found on the left side, it can safely be said that the collision is the resultant effect of negligence on the part of the person who was driving the motorcycle.

It is also required to be borne in mind that the road is wide enough and both the vehicles failed to maintain their left side; if both the vehicles were on their correct sides, the incident could not have happened. The Tribunal also held that looking to the position of the road and the size of the vehicles, it must be accepted that the deceased Lavji Anand who was driving the motorcycle had also contributed towards the accident and his contribution can be assessed at 25%, while the remaining liability must be fastened on the shoulders of the driver of the ST bus. Mr. Desai submitted that the Tribunal found that the road was wide enough and there was no reason for the Motorcyclist to come on the wrong side and to dash with the bus.

5. It is clear that the position of the vehicles which is shown in the panchanama is the situation of the vehicles subsequent to the collision and what is indicated in the panchanama is not the actual spot of impact. If that be so, though Mr. Desai's submission appears to be attractive, it is difficult to dislodge the findings recorded by the Tribunal because what was the position of the vehicles at the actual time of the impact is the material aspect. Mr. Rawal pointed out that there were brakemarks and that indicates that both the vehicles were not at the original position but the position indicated in the panchnama is surely after the incident. In view of this, if the Tribunal has come to the conclusion that it is a case of contributory negligence and the contribution is assessed at 25:75 between the motorcyclist and the ST driver, the same appears to be just and reasonable, and no evidence is pointed out on which we could take a contrary view.

In the result, both the appeals are dismissed. No order as to costs.

csm./